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August 14, 2019

Via ECF

The Honorable Peggy Kuo,
United States Magistrate Judge,
United States District Court, Eastern District of New York,
225 Cadman Plaza East,
Brooklyn, New York 11201.

Re: United States v. UBS Securities LLC, No. 18-cv-6369 (E.D.N.Y.)

Dear Magistrate Judge Kuo:

UBS respectfully requests leave to file a response of no more than three pages to Plaintiff's Sur-Reply Memorandum of Law in Opposition to Defendants' Motion To Compel Documents From HUD and Treasury, dated August 12, 2019 (ECF No. 72) ("Pl.'s Sur-Reply"). This response is necessary to address Plaintiff's mischaracterization of two decisions cited for the first time in Plaintiff's Sur-Reply. (See Pl.'s Sur-Reply at 16-17 (citing *United States v. Luce*, 2019 WL 3003300 (N.D. Ill. July 10, 2019)); 22-23 (citing *Federal Housing Finance Agency v. Nomura Holding America, Inc.*, 873 F.3d 85 (2d Cir. 2017)).)

Plaintiff contends that both cases support its position that, assuming Plaintiff prevails at trial, the Court would not consider loss causation in imposing a loss-based penalty under FIRREA (see Pl.'s Sur-Reply at 16-17, 22-23), an issue that the Court need not decide to resolve this discovery dispute. In any event, Plaintiff mischaracterizes both cases, which actually support UBS's position. See *Nomura*, 873 F.3d at 155 (after affirming factual finding that Nomura did not meet its burden to prove negative loss causation defense to Securities Act claims, recognizing that "[a] financial crisis may stand as an impediment to proving loss causation" where, as in this FIRREA case, Plaintiff bears the burden of proof "because it can be difficult to identify whether a particular misstatement or macroeconomic forces caused a security to lose value"); *Luce*, 2019 WL 3003300, at *10 (reducing FIRREA penalty because defendant's misrepresentations "were not the *proximate cause* of the loss") (emphasis in original).

Respectfully,


Robert J. Giuffra, Jr.

cc: All counsel of record (via ECF)